

**JUL 18 2006**

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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

NICOLETA MARIA LESAN, et al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-73834

Agency Nos. A95-593-163

A95-592-164

A95-592-165

MEMORANDUM<sup>\*</sup>

On Petition for Review of Orders of the  
Board of Immigration Appeals

Argued and Submitted June 16, 2006  
San Francisco, California

Before: SCHROEDER, Chief Judge, GRABER, Circuit Judge, and  
DUFFY,<sup>\*\*</sup> District Judge.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable Kevin Thomas Duffy, Senior Judge, United States District Court for the Southern District of New York, sitting by designation.

Petitioners Nicoleta Maria Lesan and Constantin Mircea Lesan, citizens and nationals of Romania, and their son, Rosan Lesan, a citizen and national of Ireland, seek review of the Board of Immigration Appeals' ("BIA") decision, without opinion, affirming the immigration judge's (the "IJ") denial of their application for asylum, for withholding of removal and for protection under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").<sup>1</sup> We have jurisdiction pursuant to 8 U.S.C. § 1252(a)(1) and remand to the BIA for further consideration.

We review to determine if there was "substantial evidence" to support the IJ's adverse credibility finding. Hoque v. Ashcroft, 367 F.3d 1190, 1194 (9th Cir. 2004). "Although this standard is deferential, the adverse credibility finding must be supported by specific, cogent reasons, and cannot be based on speculation and conjecture." Shire v. Ashcroft, 388 F.3d 1288, 1295 (9th Cir. 2004). These reasons must be substantial and bear a legitimate nexus to the findings. Aguilera-Cota v. INS, 914 F.2d 1375, 1381 (9th Cir. 1990).

Nicoleta Lesan alleges that she was persecuted for her religious activities--she is a Pentecostal Christian who was actively proselytizing. The IJ's

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<sup>1</sup> Nicoleta Maria Lesan is the lead petitioner in this matter. She was the only petitioner to file an application for asylum. Her family's claims are derivative of her claim.

adverse credibility determination was based, in large part, on his erroneous belief that Lesan lived in the town of Dobric. The town of Dobric, according to a study of Romanian demographics on which the IJ relied, has a population that is 80% Pentecostal Christian. Despite noting that Lesan lived in the town of Bistrita at the beginning of his opinion, the IJ relied on his mistaken belief that she lived in Dobric throughout his analysis, stating that the demographics of Dobric were “extraordinarily significant” to his findings.

The other reasons given by the IJ for his adverse credibility determination are based only on speculation and conjecture. In considering Lesan’s demeanor at the hearing the IJ found that Lesan was appropriate and non-assertive, and based on this, he speculated that she could not have behaved in the confrontational manner described in her testimony. The IJ also faulted Lesan for not providing additional details regarding her interaction with the police. However, Lesan was not on notice to provide such information because she was not asked to do so by either the IJ or the government. Akinmade v. INS, 196 F.3d 951, 957 (9th Cir. 1999).

The IJ’s adverse credibility finding is not supported by substantial evidence. Because each of the IJ’s proffered reasons for the adverse credibility finding fails, Lesan’s testimony must be accepted as true. Kaur v. Ashcroft, 379 F.3d 876, 890

(9th Cir. 2004). We therefore grant the petition for review and remand to the BIA to determine whether, accepting Lesan's testimony as credible, she is eligible for relief. INS v. Orlando Ventura, 537 U.S. 12, 16-17 (2002) (per curiam).

Petition GRANTED and case REMANDED.